THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15099 OF 2006

DATED: 24TH July, 2006.

Between :

Dr. Nimshkavi Bikshapathy … Petitioner

And

1. The Govt. of A.P., rep. by its Secretary, Social Welfare Department, Secretariat Buildings, Hyderabad and 2 others. .. Respondents

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ORDER:

The petitioner is a Medical Graduate. He was appointed in A.P. State Medical and Health Service as a Medical Officer / Assistant Surgeon in the year 1991 and presently he is prosecuting post-graduation course in M.D. (Forensic Medicine) in Andhra Medical College, Visakhapatnam. It is claimed that he belongs to Kolupula Vandlu caste which has been declared to be a scheduled caste by the Presidential order as was published in G.O.Ms.No.122, dated 6-6-1986. Admittedly, the petitioner was allotted a seat in the Medical College in the quota earmarked for scheduled caste community and he was also appointed to the post of Civil Assistant Surgeon in the S.C. category basing on the caste certificate dated 30-12-1991 issued by the Commissioner of Social Welfare, A.P., Hyderabad. The social status of the petitioner as Scheduled Caste was also certified by the Sub-Collector, Parkal and Sub-Collector, Mulug vide certificates dated 2-10-1986 and 14-2-1989 respectively.

While so, the petitioner was served with a show-cause notice dated 17-2-2005 by the Revenue Divisional Officer, Mulug stating that in the enquiry conducted by the Mandal Revenue Officer, Shayampet as to the genuineness of the caste of the petitioner, it was found that the petitioner belongs to Kunapuli which is declared as backward class by the Government of A.P. vide G.O.Ms.No.1793, dated 23-9-1970 and therefore calling upon the petitioner to show-cause as to why action should not be taken against him for obtaining the caste

certificate as Kolupulavandlu from the Sub-collector, Parkal and also why such certificate should not be cancelled. The petitioner filed W.P.No.6837 of 2005 seeking a declaration that the Revenue Divisional Officer, Mulug has no power or authority to enquire into the social status of the petitioner and therefore the show-cause notice dated 17-2-2005 is arbitrary, illegal and violative of the procedure prescribed under Section 5 of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short, 'the Act'). When the said writ petition was taken up for consideration, it was represented by the learned Government Pleader appearing for the respondents that the Revenue Divisional Officer was not proposing to pass any orders in pursuance of the show-cause notice dated 17-2-2005 as he had realised that he has no jurisdiction to cancel the caste certificate and as a matter of fact the relevant papers were being forwarded to the District Collector, who was the competent authority, to take necessary action. Accordingly, W.P.No.6837 of 2005 was disposed of recording the statement of the learned Government Pleader and holding that the Revenue Divisional Officer was not competent either to issue show-cause notice or to take further steps for cancelling the caste certificate. Thereafter, the District Revenue Officer, Warangal issued a notice in Form-VI directing the petitioner to attend the enquiry regarding his community claim on 6-9-2005 before the District Level Scrutiny Committee and to produce all the documentary evidence in support of his claim. In response, the petitioner submitted a detailed explanation on 19-9-2005 reiterating that he belongs to Kolupula Vandlu community as was recorded in his school records and other records for past more than four decades. However, it appears that the District Level Scrutiny Committee opined that the petitioner belongs to Kunapuli which is B.C. caste but not Kolupula Vandlu S.C. caste and recommended for cancellation of the caste certificate. On the basis of the same, the 2nd respondent while enclosing the report of the District Level Scrutiny Committee issued a show-cause notice dated 1-5-2006

directing the petitioner to make his representation with documentary evidence. The petitioner made a representation on 23-5-2006. Thereafter, the 2nd respondent passed the impugned order dated 25-6-2006 cancelling with immediate effect the caste certificates dated 14-2-1989 and 2-8-1991 and declaring that the petitioner does not belong to Kolupulavandlu caste. Aggrieved by the same, this writ petition is filed seeking a Writ of Certiorari to call for the records relating to and connected with the order passed by the 2nd respondent dated 25-6-2006, and quash the same holding that it is arbitrary, illegal and against the mandatory provisions of the Act and the Rules made thereunder.

Heard both the parties and perused the material on record.

At the outset, it is to be noted that the impugned order dated 25-6-2006 passed by the 2nd respondent under Section 5 (1) of the Act, is appealable under Section 7 (2) of the Act. Without exhausting the said alternative remedy of appeal in the Act, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

However, the learned Counsel for the petitioner vehemently contended that the availability of alternative remedy under the statute was not an absolute bar to exercise the judicial review under Article 226 of the Constitution of India particularly when the order impugned was passed without following the mandatory statutory provisions.

The learned Counsel in support of his contention placed reliance upon the decisions of the Supreme Court in A.UMARANI v. REGISTRAR, CO-OP. SOCIETIES[1] and S.J.S. BUSINESS ENTERPRISES (P) LTD. v. STATE OF BIHAR[2]. There can be no dispute about the ratio laid down in the above cases that the existence of adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 of the Constitution of India will consider for exercising the

discretion to issue a Writ under Article 226. However, the law is equally well settled that normally this Court does not entertain a writ petition when the party fails to invoke the more efficacious alternative remedy available under the statute except where the order is wholly without jurisdiction or where there has been a violation of principles of natural justice or where, the vires of an Act is challenged. Admittedly, the order impugned is not challenged on any of the above grounds.

The learned Counsel for the petitioner has also relied upon a decision of this Court in BHAKTHAVATHSALA SUKUMAR v. M/s. HINDUSTAN PETROLEUM CORPORATION LTD.[3] wherein this Court set aside the impugned order notwithstanding the alternative remedy of appeal available under the Act. In the said case, this Court found that the documents which go against the interest of the petitioner were not furnished to the petitioner and non-supply of the such copies would amount to violation of the principles of natural justice and accordingly while setting aside the order impugned, remanded the matter for fresh enquiry.

The facts in the present case are not identical and therefore the principle laid down in the said decision does not apply. The other two decisions namely M. KARUNAKAR vs. STATE OF A.P.[4] and SANKARAVAMSAM SASIDEVI (KUM.) v. COMMISSIONER OF TRIBAL WELFARE[5] are also of no help since this Court has not gone into the merits of the case. Yet another decision cited by the learned Counsel for the petitioner P.JAYARAMAIAH vs. CONVENOR, EDCET-98, S.V.U.[6] arises out of a case where the petitioners therein had challenged the action of the respondents in insisting to produce the integrated certificates under the Act in spite of the fact that they produced the caste certificates under the Scheduled Caste and Scheduled Tribes (Amendment) Order, 1976. The facts in the present case are clearly distinguishable and the above Division

Bench judgment which was rendered interpreting Section 2 of the Act is not applicable.

As noted above, it is not the case of the petitioner that the impugned order was without jurisdiction or that the same was passed in violation of principles of natural justice. Whether there is any violation of the procedure prescribed under the statutory rules is a question to be decided after due enquiry by the appellate authority. Hence, I am unable to agree with the learned Counsel for the petitioner that the petitioner is entitled to maintain this writ petition without recourse to the remedy of appeal under the Act.

Accordingly, the Writ Petition is dismissed. No costs.

However, the petitioner is granted liberty to work out the remedy of appeal as available under law.

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G. ROHINI, J.

Dt. 24-7-2006
gbs

[1] (2004) 7 SCC 112

[2] (2004) 7 SCC 166

[3] 2003 (6) ALT 133

[4] 2001 (1) ALT 688

[5] 2002 (2) ALT 32 (D.B.)

[6] 1999 (3) ALT 683 (D.B.)